IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITIOIN NO. 9033 OF 2003

WITH
WRIT PETITION NO. 6746 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. S.S. Shah for the petitioners.
Mr. G.S. Godbole with Mr. Sahashrabudhe for the respondent No.1.

CORAM : ANOOP V. MOHTA, J.

DATE : 16.11.2005

. In both the writ petitions, orders dated 13/8/2003, (Suit No. 725/2003 and Suit No.726/2003) passed by Jt. Civil Judge, J.D. Solapur has been challenged, as an application for appointment of Court Commissioner, as prayed was rejected. The main suits

revolve around both the shops premises situated at Murarji Peth, within the Municipal Limits, District Solapur. The basic suits No. 725/2003 and 726/2003 of the petitioners/plaintiffs are for declaration of tenancy related to the suit premises. As per the main prayer itself, there are locks put up by both the parties on both the shops. There is an undisputed position that the suits for declaration are pending. By these applications in both the writ petitions the petitioners have made exhaustive prayers, which have been opposed by the respondents. The learned Judge by impugned orders therefore, rejected the same.

2. Heard the learned advocates appearing for the parties. the respondents' advocate has relied on (**Sanjay Namdeo Khandare v. Sahebrao Kachru Khandare and others) 2001 (2) Mh.L.J.. 959)** and contended that in view

of the provisions of order 26 rule 9 the Commissioner cannot be appointed for collecting evidence. The learned Counsel appearing for the petitioners however, relied on order 39 rule 7, whereby the Court on an application of any party can make and pass appropriate order for inspection or any observation to be made which may deem necessary or expedient for the purpose of obtaining full information or evidence which are necessary to decide the suit. The case Sanjay (Supra) is distinguishable on fact itself.

3. After considering the rival contentions, it is very clear that this is not the case where, any direction is to be issued to submit any details about the actual possession of the suit premises. In view of the above undisputed position on the record, that there are two locks on both the suit premises put up by both the parties since 22/9/2002. I see there is no reason that

in such matters said applications for preparation for the inventory as sought should not be granted through the Court Commissioner. I am convinced, in view of the provisions of order 39 rule 7 of C.P.C. that the Court has power to pass such appropriate order to collect the information and evidence, which are necessary for final adjudication of the suit in question. Looking to the nature of the suit in questions and the controversy as reflected from the pleadings it will be in the interest of justice that the Commissioner be appointed to make inventory about the items lying in both the premises.

4. Keeping all these into account the present Writ petition Nos.9033/2003 arises from Reg. Civil Suit No.725/2003 and 6746/2003 arises from Reg.Civil Suit No.726/2003 are disposed of with the direction to appoint the Court Commissioner and the Court Commissioner

shall visit the disputed premises and take inventory of record/items by unlocking the premises. The Commissioner to submit the report in respect of both the premises to the Court accordingly. All the points are kept open. In view of this, both the writ petitions are disposed of with no order as to cost.

. C.C. expedited.

(ANOOP V. MOHTA,J.)